

Defendant, Michael S. Regan, in his official capacity as the Administrator of the United States Environmental Protection Agency (“EPA”), and Plaintiff, Our Children’s Earth Foundation (“OCE” or “Plaintiff”), by and through the undersigned counsel, hereby jointly move the Court to enter the attached Consent Decree (attached hereto as Exhibit A). In support of this joint motion, EPA and Plaintiff (collectively, the “Parties”) state as follows:

1. Plaintiff previously provided the EPA Administrator notice of its intent to file a lawsuit (“Notice Letter”) pursuant to section 304(a)(2) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7604(a)(2), to compel the Administrator to assemble, publish, and publish notice of, as required by Section 110(h)(1) of the CAA, 42 U.S.C. § 7410(h)(1), comprehensive documents setting forth the requirements of the state implementation plans (“SIPs”) for each of the 50 states.

2. On December 2, 2020, Plaintiff filed its Complaint in this case to compel the Administrator to assemble, publish, and publish notice of, as required by Section 110(h)(1) of the CAA, 42 U.S.C. § 7410(h)(1), comprehensive documents setting forth the requirements of the SIPs for California, Arizona, and Nevada (“Complaint”). Further, on July 9, 2021, Plaintiff filed its Amended Complaint in this case to compel the Administrator to assemble, publish, and publish notice of, as required by Section 110(h)(1) of the CAA, 42 U.S.C. § 7410(h)(1), comprehensive documents setting forth the requirements of the SIPs for all the States., including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively the “States”).” (see Para. 1 of the Amended Complaint).

3. Wishing to effectuate a settlement of Plaintiff’s claims in its aforementioned Notice Letter and Amended Complaint, the Parties negotiated to reach a settlement that was acceptable to both parties. Their negotiated agreement is embodied in the attached proposed Consent Decree (the “Consent Decree”). Under the CAA and the Consent Decree, EPA was required to and did provide notice of the Consent Decree in the Federal

Register and an opportunity for public comment pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). In addition, after the Consent Decree underwent notice and comment, the Administrator or the Attorney General, as appropriate, were obligated to consider any written comments in determining whether to withdraw or withhold consent to the Consent Decree, in accordance with CAA section 113(g). No comments were received and neither the Administrator nor the Attorney General determined to withdraw or withhold consent to the Consent Decree.

4. The Consent Decree provides, in part, that no later than December 31, 2021, EPA will assemble and publish online on EPA-managed or controlled websites the “SIP Rules,” including SIP Rule revisions and submittals finally approved by EPA and published in the Federal Register on or before November 30, 2021 for all States, except for the following States: California, Connecticut, North Carolina, Wisconsin, Puerto Rico, and the U.S. Virgin Islands. The Consent Decree further provides that no later than September 30, 2022, EPA will assemble and publish online on its EPA-managed or controlled websites the SIP Rules, including SIP Rule revisions and submittals finally approved by EPA and published in the Federal Register on or before August 31, 2022, for every State. The Consent Decree also provides that no later than November 30, 2022, EPA shall submit to the Office of the Federal Register, for publication in the Federal Register, a notice of availability of the SIP Rules information published on-line by EPA.

5. Under the Consent Decree, the Court retains jurisdiction to resolve any requests for costs of litigation, including attorney fees. After the Administrator has completed the actions set forth in Paragraphs 1-3 of the Consent Decree and after notice of availability of the SIP Rules information has been published in the Federal Register, and the issue of costs of litigation (including reasonable attorney fees) has been resolved, either party may move this Court to have this Consent Decree terminated.

6. Through the Consent Decree, EPA and Plaintiff indicate their agreement that this settlement resolves the issues raised in the Notice Letter and the pleadings, and that the Consent Decree is fair, reasonable, and in the public interest.

Accordingly, the Parties respectfully move the Court to enter the attached Consent Decree as an order of the Court.

Respectfully submitted, this 6th day of December, 2021.

/s/ Stuart Wilcox

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OUR CHILDREN’S EARTH FOUNDATION,
a non-profit corporation,

Plaintiff,

v.

MICHAEL S. REGAN, in his official capacity
as Administrator of the United States
Environmental Protection Agency,

Defendant.

Civil Case No. 20-cv-8530

CONSENT DECREE

WHEREAS, on or before September 21, 2020, Plaintiff, Our Children’s Earth Foundation (“OCE” or “Plaintiff”), provided the Defendant Administrator of the U.S. Environmental Protection Agency (“EPA”)¹ with notice of its intent to file a lawsuit (“Notice Letter”) pursuant to section 304(a)(2) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7604(a)(2), to compel the Administrator to assemble, publish, and publish notice of, as required by Section 110(h)(1) of the CAA, 42 U.S.C. § 7410(h)(1), comprehensive documents setting forth the requirements of the state implementation plans (“SIPs”) for all 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively the “States”). *See* 42 U.S.C. § 7602(d) (defining term “States” under the Clean Air Act);

WHEREAS, under section 304(b)(2) of the CAA, 42 U.S.C. § 7604(b)(2), the notice period for Plaintiff’s Notice Letter ran 60 days later, or no later than November 20, 2020;

WHEREAS, on December 2, 2020, Plaintiff filed its Complaint in this case to compel the Administrator to assemble, publish, and publish notice of, as required by Section 110(h)(1) of the CAA, 42 U.S.C. § 7410(h)(1), comprehensive documents setting forth the requirements of the SIPs for California, Arizona, and Nevada (“Complaint”);

WHEREAS, on July 9, 2021, Plaintiff filed its Amended Complaint in this case to compel the Administrator to assemble, publish, and publish notice of, as required by Section 110(h)(1) of the CAA, 42 U.S.C. § 7410(h)(1), comprehensive documents setting forth the requirements of the SIPs for all the States.

WHEREAS, Plaintiff and the Administrator (collectively “the Parties”) wish to effectuate a settlement of Plaintiff’s claims in its aforementioned Notice Letter and Amended Complaint in the

¹ At the time of submission of the Notice Letter and filing of the Complaint Andrew Wheeler was Administrator of EPA. His successor Michael S. Regan is hereby substituted in his place pursuant to Rule 25(d).

above-captioned matter without expensive and protracted litigation, and without admission of any issue of law or fact;

WHEREAS, the Parties consider this Consent Decree to be an adequate and equitable resolution of the claims that are the subject of the Amended Complaint;

WHEREAS, the Parties agree that this Court has jurisdiction over the matters resolved in this Consent Decree pursuant to the citizen suit provision in CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2), and that venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(e) and Civil L.R. 3-2(c)-(d);

WHEREAS, the Parties agree and acknowledge that before this Consent Decree could be finalized and entered by the Court, EPA must have provided notice of this Consent Decree in the Federal Register and an opportunity for public comment pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). In addition, after this Consent Decree has undergone notice and comment, the Administrator and/or the Attorney General, as appropriate, shall have considered any written comments in determining whether to withdraw or withhold their consent to the proposed Consent Decree, in accordance with CAA section 113(g). By moving the Court to enter this Consent Decree, the Parties acknowledge that the CAA 113(g) notice and comment have been completed and the Administrator and/or the Attorney General do not elect to withdraw or withhold consent; and

WHEREAS, the Court, by entering this Consent Decree, finds that this Consent Decree represents a fair, equitable, and adequate resolution of the claims resolved herein;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. No later than December 31, 2021, EPA will assemble and publish online on EPA-managed or controlled websites the “SIP Rules,” including SIP Rule revisions and submittals finally approved by EPA and published in the Federal Register on or before November 30, 2021 for all States, except for the following States: California, Connecticut, North Carolina, Wisconsin, Puerto Rico, and the U.S. Virgin Islands. No later than September 30, 2022, EPA will assemble and publish online on its EPA-managed or controlled websites the SIP Rules, including SIP Rule revisions and submittals finally approved by EPA and published in the Federal Register on or before August 31, 2022, for every State.

(a) “SIP Rules” contain state implementation plan requirements, and include regulations, ordinances, and statutes and source specific permits or requirements, approved by EPA and that are identified and incorporated by reference in the Code of Federal Regulations. For the State of Nevada, for example, such information would include the Nevada regulations, ordinances, statutes and source specific permits or requirements, if any, identified in the tables at 40 C.F.R. §§ 52.1470(c) and (d) and, for the State of Arkansas, as a further example, such information would include the Arkansas regulations, ordinances, statutes and source specific permits or requirements identified in the tables at 40 C.F.R. §§ 52.170(c) and (d). SIP Rules do not include “SIP Plans,” which are nonregulatory or quasi-regulatory plans or other nonregulatory or quasi-regulatory material, such as, for the State of Nevada, for example, the nonregulatory and quasi-regulatory provisions and measures identified in the table at 40 C.F.R. § 52.1470(e) and for the State of Arkansas, as a further example, the nonregulatory and quasi-regulatory provisions and measures identified in the table at 40 C.F.R. § 52.170(e).

(b) The requirement of this section to publish information online on EPA websites may be satisfied by publishing on such websites a “link” to where the information may be found.

2. No later than November 30, 2022, EPA shall submit to the Office of the Federal Register, for publication in the Federal Register, a notice of availability of the information published in accordance with paragraph 1.

3. Within five (5) business days after submitting the publication notice to the Office of the Federal Register described in Paragraph 2, the Administrator shall send copies of such publication notice to Plaintiff. Within ten (10) business days after the publication on EPA websites, by December 31, 2021 and September 30, 2022, respectively, as described in Paragraph 1, EPA shall provide informal email notice to Plaintiff that EPA has made the website publication required by that Paragraph.

4. After the Administrator has completed the actions set forth in Paragraphs 1-3 of this Consent Decree, after notice of availability of comprehensive (as of at least August 31, 2022) SIPs for every State has been published in the Federal Register, and the issue of costs of litigation (including reasonable attorney fees) has been resolved, either party may move to have this Consent Decree

terminated. The other party shall have fourteen (14) days in which to respond to such motion, unless the parties stipulate to a longer time for response.

5. The deadlines set forth in Paragraphs 1-3 hereof may be modified only by: (a) written stipulation of the Parties with notice to the Court; or (b) the Court following motion of any party to this Consent Decree, pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by the non-moving party.

6. Except as provided herein, nothing in this Consent Decree shall be construed to limit or modify any discretion accorded to EPA or the Administrator by the CAA or by general principles of administrative law in taking the actions that are the subject of this Consent Decree.

7. Nothing in this Consent Decree shall be construed to confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals pursuant to CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1). Nothing in the terms of this Consent Decree shall be construed to waive, limit, or modify any remedies, rights to seek judicial review, or defenses the Parties may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

8. Any notices required or provided for by this Consent Decree shall be made in writing, via email or other means if the documents cannot be readily transmitted via email, and sent to the following:

For Plaintiff Our Children's Earth Foundation:

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9. The obligations imposed on the Administrator under this Consent Decree can only be undertaken using appropriated funds. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the Administrator obligate funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable statute. The Parties recognize that the possibility exists that a lapse in the appropriations that fund EPA could delay compliance with the timetables in this Consent Decree. If a lapse in appropriations for EPA occurs within 120 days before any deadline in this Consent Decree, that deadline shall be automatically extended one day for each day of the lapse in appropriations. Nothing in this paragraph shall preclude the Administrator from seeking an additional extension through stipulation of the Parties or modification of this Consent Decree under Paragraph 5.

10. In the event of a dispute between the Parties concerning the interpretation or implementation of any aspect of this Consent Decree, the disputing party shall provide the other party with a written notice outlining the nature of the dispute and requesting informal negotiations. The Parties shall meet and confer to attempt to resolve the dispute. If the Parties cannot reach an agreed-upon resolution within ten (10) business days after receipt of the notice, any party may move the Court to resolve the dispute.

11. No motion or other proceeding seeking to enforce this Consent Decree or for contempt of court shall be filed unless the procedure set forth in Paragraph 10 has been followed.

12. The deadline for filing a motion for costs of litigation (including attorney fees) for activities performed prior to entry of the Consent Decree is hereby extended until one hundred twenty

(120) days after this Consent Decree is entered by the Court. During this period, the Parties shall seek to resolve any claim for costs of litigation (including attorney fees), and, if they cannot, Plaintiff will file a motion for costs of litigation (including attorney fees) or a stipulation or motion to extend the deadline to file such a motion. The Administrator reserves the right to oppose any such request. The Court shall retain jurisdiction to resolve any requests for costs of litigation, including attorney fees.

13. This Court shall retain jurisdiction over this matter to enforce the terms of this Consent Decree.

14. Plaintiff reserves the right to seek additional costs of litigation (including reasonable attorney fees) incurred subsequent to entry of this Consent Decree. The Administrator reserves the right to oppose any such request for additional costs of litigation (including attorney fees).

15. If for any reason the Court declines to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the proposed Consent Decree's terms may not be used as evidence in any litigation between the Parties.

16. The Parties treat this Consent Decree as jointly drafted, and any rules of construction that construe any ambiguities in this document against the drafting party shall be inapplicable in any dispute concerning the interpretation of this Consent Decree.


17. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to bind that party or those parties to the terms of this Consent Decree.

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IT IS SO ORDERED this 13th day of December, 2021


Hon. J. Yvonne Gonzalez Rogers
United States District Judge

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